

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201505158	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/23/2015 8:50 PM	Location of Incident: Beach 54th Street and Edgemere Avenue	Precinct: 101	18 Mo. SOL 12/23/2016	EO SOL 12/23/2016	
Date/Time CV Reported Wed, 06/24/2015 11:05 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 06/24/2015 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Charles Dever	07693	950318	PBQS SU
2. POM Carmelo Stracuzzi	19479	951305	PBQS SU
3. POM Derek Webber	21329	949786	PBQS SU
4. POM Kenneth Sepulveda	22097	947482	PBQS SU
5. POM Eric Cabrera	23535	938142	PBQS SU
6. SGT Javier Rodriguez	05096	939338	PBQS SU
7. Officers			PBQS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda refused to provide his name and shield number to § 87(2)(b)	
C.SGT Javier Rodriguez	Abuse: PO Javier Rodriguez refused to provide his name and shield number to § 87(2)(b)	
D.POM Charles Dever	Abuse: PO Charles Dever refused to provide his name and shield number to § 87(2)(b)	
E.POM Derek Webber	Abuse: PO Derek Webber refused to provide his name and shield number to § 87(2)(b)	
F.POM Carmelo Stracuzzi	Abuse: PO Carmelo Stracuzzi refused to provide his name and shield number to § 87(2)(b)	
G.POM Eric Cabrera	Abuse: PO Eric Cabrera refused to provide his name and shield number to § 87(2)(b)	
H.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda threatened to arrest § 87(2)(b)	
I.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda frisked § 87(2)(b)	
J.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda searched § 87(2)(b)	
K.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
L.POM Derek Webber	Abuse: PO Derek Webber searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

Officer(s)	Allegation	Investigator Recommendation
M.POM Carmelo Stracuzzi	Abuse: PO Carmelo Stracuzzi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
N. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	
O.POM Charles Dever	Abuse: PO Charles Dever threatened § 87(2)(b) with the use of force.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 23, 2015, at approximately 8:50 p.m., § 87(2)(b) was driving with his girlfriend, § 87(2)(b) on Rockaway Beach Boulevard. PO Kenneth Sepulveda of the Patrol Borough Queens South Anti-Crime stopped them for driving with an air freshener hanging from the passenger's side visor (**Allegation A**). PO Sepulveda was the driver of an unmarked Ford Taurus containing Sgt. Javier Rodriguez and PO Eric Cabrera of Patrol Borough Queens South Anti-Crime. Shortly after § 87(2)(b)'s vehicle was pulled over a second vehicle containing PO Charles Dever, PO Derek Webber and PO Carmello Stracuzzi of Patrol Borough Queens South Anti-Crime, pulled diagonally in front of § 87(2)(b)'s vehicle.

All six officers, who were in plainclothes, exited their vehicles and approached § 87(2)(b). PO Sepulveda was the contact officer and asked § 87(2)(b) for his driver's license and registration. § 87(2)(b) asked why he was being pulled over, and did not initially provide his license. § 87(2)(b) eventually provided his license and registration. and PO Sepulveda, seeing a bat near the driver's seat of the vehicle, ordered § 87(2)(b) out of his vehicle. § 87(2)(b) initially refused the order and asked for all of the six officers shield numbers. All six officers allegedly ignored § 87(2)(b)'s request and placed their shields, that were hanging from their necks, inside of their shirts so they were no longer visible (**Allegations B-G**). When § 87(2)(b) continued to refuse, PO Sepulveda allegedly stated, "If you don't exit your vehicle, I'm going to pull you out and arrest you." (**Allegation H**).

§ 87(2)(b) exited his vehicle and was allegedly frisked and searched by PO Sepulveda (**Allegation I-J**). PO Sepulveda searched § 87(2)(b)'s vehicle (**Allegation K**). PO Webber and PO Stracuzzi allegedly assisted in the search of § 87(2)(b)'s vehicle (**Allegation L and M**). § 87(2)(b) later learned that during the search of his vehicle, officers allegedly ripped out his speakers (**Allegation N**).

Throughout the alleged search of his person and his vehicle, § 87(2)(b) stated that he was contesting the search, and his prolonged detention. In response, PO Dever allegedly grabbed § 87(2)(b)'s bat and slapped it on his open palm while saying, "Keep Talking, keep talking." (**Allegation O**).

According to § 87(2)(b) the stop ended when a call for assistance came over their radio, causing PO Sepulveda to toss him his wallet back, and all of the officers to rush into their vehicles, leaving § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) was not issued a summons as a result of this incident.

This case was closed nearly two months after the 90-day benchmark due to officer identification issues and no documentation prepared with regards to this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) this case was unsuitable for mediation.
- A notice of Claim inquiry was sent to the NYC comptroller's office on November 7, 2015. A response to this inquiry will be included in the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This was the first CCRB complaint filed by or involving § 87(2)(b) or § 87(2)(b) § 87(2)(b).
- PO Sepulveda has been a member of the service for seven years, he has one prior substantiated allegation against him. In CCRB case #201501773 a stop allegation was substantiated, § 87(2)(g), § 87(4-b). The CCRB recommended Command Discipline B, and there is no NYPD disposition available.
- Sgt. Rodriguez has been a member of the service for 10 years, and there are no substantiated CCRB allegations against him. § 87(2)(g).
- PO Dever has been a member of the service for 4 years and there are no substantiated allegations against him. § 87(2)(g).
- PO Stracuzzi has been a member of the service for 4 years. § 87(2)(g).
- PO Webber has been a member of the service for 5 years. He has 4 substantiated allegations against him. In CCRB case #201402170 a vehicle search and frisk allegation were substantiated by the CCRB. Instructions were recommended, but no NYPD disposition is available. In CCRB case 201402281 a Stop allegation and Frisk allegation were substantiated. Command Discipline was recommended by the CCRB, the NYPD recommended Instructions, and PO Webber ultimately received formalized training.
- PO Cabrera has been a member of the service for 10 years, he has no substantiated allegations against him, § 87(2)(g), § 87(4-b).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated that the officer that approached his side of the vehicle frisked him, searched him, threatened to arrest him, and searched his vehicle. PO Sepulveda admitted to approaching § 87(2)(b)'s vehicle and speaking to § 87(2)(b) throughout the entirety of the stop, as well as frisking § 87(2)(b) and searching the lungeable areas of the vehicle § 87(2)(g).

§ 87(2)(b) alleged that every officer refused to provide their shield numbers to him. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) stated that the officer that threatened § 87(2)(b) with the use of force was an over six-foot-tall, 250-lb white man with an orange beard. Of the six officers identified, PO Dever most closely matches this description (Board Review 1). He is a 6'2" tall, 280-lb white man with blonde/reddish hair. § 87(2)(g)

§ 87(2)(b) stated that a total of four officers searched his car, but could not specify which officers. § 87(2)(b) was also uncertain on how many officers, in total, were present for the stop, saying throughout the statement that there were "six or more" officers present. § 87(2)(b) on the other hand, stated that two officers searched § 87(2)(b)'s vehicle. § 87(2)(b) was also

certain that six officers were present for the stop, § 87(2)(g).
§ 87(2)(b) and § 87(2)(b) were consistent that two officers stayed at the back of the vehicle with them, not participating in the search, and that PO Cabrera simply stood back and observed throughout the interaction. § 87(2)(b) provided descriptions of all of the officers present for the stop, except for the officers that allegedly searched the car. The descriptions she provided matched in physical description and actions based on officer testimony with all but two officers, PO Webber and PO Stracuzzi. § 87(2)(g)

Upon returning to his vehicle, § 87(2)(b) saw that the speakers in his back seat were ripped out of his car. § 87(2)(b) and § 87(2)(b) could not identify which officers caused this damage nor did they observe them doing so. All of the officers denied removing his speakers. § 87(2)(g)

Allegation A –Abuse of Authority: PO Kenneth Sepulveda stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) (Board Review 2) and § 87(2)(b) (Board Review 3) both stated that an officer stated to § 87(2)(b) that they were pulling him over for an air-freshener and a paper stating that he donated to wounded veterans, hanging from his passenger’s side visor. § 87(2)(b) could not provide a photograph of the air-freshener that allegedly obstructed his view because he stated that the air-freshener was removed from the passenger’s side visor to avoid being stopped or summonsed for it in the future. § 87(2)(b) admitted that he had been summonsed for the air freshener in previous occasions.

PO Sepulveda (Board Review 4) and Sgt. Rodriguez (Board Review 5) both stated that PO Sepulveda observed § 87(2)(b) commit some VTL violation prior to pulling him over. However, neither PO Sepulveda, nor Sgt. Rodriguez could name the VTL violation committed by § 87(2)(b). PO Dever (Board Review 6), PO Stracuzzi (Board Review 7), and PO Webber (Board Review 8) all stated that they arrived at the stop location after § 87(2)(b) had already been stopped, and therefore were not in a position to observe any VTL violations he may have committed prior to being stopped.

None of the officers present for this stop have noted in their memo books the reason for the vehicle stop, and due to the fact that the officers were called to respond to an 85 during this stop, no summons was issued to § 87(2)(b) for any VTL violation committed in regards to the stop.

According to N.Y. VTL §375.30 It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the vehicle, except required or permitted equipment of the vehicle, in such a manner as to obstruct or interfere with the view of the operator through the windshield, or to prevent him from having a clear and full view of the road and condition of traffic behind such vehicle. (Board Review 15)

The size and position of the object hung from the vehicle are factors to consider in determining whether the object is considered to be an obstruction of view (*see People v. O’Hare* 73 A.D.3d 812 (2010) air-freshener hanging from rear-view mirror at dashboard level determined to have not obstructed driver’s view *and People v. Bookman* 2015 Slip Op 07037 (Sup. Ct. of New York 2nd Dept. 2015) ornamental sandal four to five inches in long and possibly two inches

wide hanging four to five inches beneath rearview mirror reasonably determined to obstruct or interfere with driver's view through windshield)

A police officer who can articulate credible facts establishing reasonable cause to believe that someone has violated a Vehicle and Traffic Law has established a reasonable basis to effectuate a stop. People v. Robinson 97 N.Y.2d 341 (2001) (Board Review 10).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation B- Abuse of Authority: PO Kenneth Sepulveda refused to provide his name and/or shield number to § 87(2)(b)

Allegation C- Abuse of Authority: Sgt. Javier Rodriguez refused to provide his name and shield number to § 87(2)(b)

Allegation D- Abuse of Authority: PO Charles Dever refused to provide his name and shield number to § 87(2)(b)

Allegation E- Abuse of Authority: PO Derek Webber refused to provide his name and shield number to § 87(2)(b)

Allegation F- Abuse of Authority: PO Carmelo Stracuzzi refused to provide his name and shield number to § 87(2)(b)

Allegation G- Abuse of Authority: PO Eric Cabrera refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that while still inside of the vehicle, he asked all six officers for their badge numbers. § 87(2)(b) stated that, the officers all had no response, and they all tucked their shields, which was hanging from a chain around their neck, into their shirts. § 87(2)(b) did not corroborate that § 87(2)(b) asked for the shield number, or that the officers tucked their shields in their shirts. However, § 87(2)(b) stated that she was mostly focused on the officer that was at her side of the vehicle.

All of the officers denied that § 87(2)(b) asked for any of the officers' shield numbers and denied tucking their shields into their shirts, or seeing any officer do so.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation H- Abuse of Authority: PO Kenneth Sepulveda threatened to arrest § 87(2)(b)

Allegation I- Abuse of Authority: PO Kenneth Sepulveda frisked § 87(2)(b)

Allegation J- Abuse of Authority: PO Kenneth Sepulveda searched § 87(2)(b)

Allegation K- Abuse of Authority: PO Kenneth Sepulveda searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that § 87(2)(b) had a youth baseball bat in the immediate vicinity of the driver's seat at the time of this stop. It is undisputed that PO Sepulveda ordered § 87(2)(b) out of

his vehicle, and § 87(2)(b) did not immediately comply with the request. When § 87(2)(b) complied, he was frisked, and PO Sepulveda searched § 87(2)(b)'s vehicle.

§ 87(2)(b) (Board Review 2) corroborates PO Sepulveda and Sgt. Rodriguez's claim that PO Sepulveda noticed the bat by the driver's seat directly before ordering § 87(2)(b) out of his vehicle. § 87(2)(b) stated that when he refused PO Sepulveda stated, "If you don't exit your vehicle, I'm going to pull you out and arrest you." § 87(2)(b) stated that PO Sepulveda stated to § 87(2)(b) "Sir, if you don't step out, I'm going to drag you out." PO Sepulveda denied making either of the statements, and all of the officers interviewed denied hearing PO Sepulveda make that statement. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both PO Sepulveda and Sgt. Rodriguez admitted to frisking § 87(2)(b) however § 87(2)(b) was consistent that he was only frisked by PO Sepulveda. He also stated that he was searched by PO Sepulveda. § 87(2)(b) did not see § 87(2)(b) being searched but stated that she was ordered to face Sgt. Rodriguez while the alleged search was occurring. PO Sepulveda and Sgt. Rodriguez were consistent in that § 87(2)(b) was only frisked and all of the officers interviewed denied seeing § 87(2)(b) being searched at any point.

After § 87(2)(b) was removed, frisked, and the bat was removed from his vehicle, PO Sepulveda admitted to conducting a limited search of the "lungeable" areas of the front driver's seat. This included searching under and on the sides of the driver's seat. PO Sepulveda admitted to opening the back door of § 87(2)(b)'s vehicle and looking under the driver's seat from behind.

PO Sepulveda and Sgt. Rodriguez stated and have noted in their memo books that they smelled an odor of marijuana emanating from § 87(2)(b)'s vehicle during this stop. PO Sepulveda also stated that he mentioned this observation to § 87(2)(b) and § 87(2)(b) admitted to smoking marijuana prior to driving. § 87(2)(b) and § 87(2)(b) both denied ever smoking in § 87(2)(b)'s vehicle or smoking at all that day. None of the other officers corroborate a smell of marijuana emanating from the vehicle. Additionally, PO Sepulveda and Sgt. Rodriguez explicitly stated that other than asking § 87(2)(b) a single question about marijuana, they took no investigative steps to identifying or addressing the potential marijuana related offense in regards to this vehicle stop. PO Sepulveda was clear in his testimony that the sole reason for his limited search of the vehicle was to address the threat presented by § 87(2)(b)'s bat.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

During a traffic stop, ordering the driver or passenger out of the vehicle is a minimal intrusion and as a matter of course, officers may order occupants out of their vehicle pending the completion of the stop. Maryland v. Wilson 519 U.S. 408 (1997).

Once the occupants have left the car, the parties are in the same position as exist in any street encounter. In this situation, the standard for justifying a frisk is well established, i.e., the police must have at least a reasonable suspicion to believe that the individual has been or is about to be involved in criminal activity and a concomitant reasonable fear that the individual is armed. People v. Barriera 191 A.D.2d 153 (1st Dept. 1993). A reasonable suspicion that a person has

committed a crime involving potentially dangerous instruments provides an officer a reasonable basis to conduct a frisk. People v. Burks 235 A.D.2d 373 (1st Dept. 1997).

A police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm. Absent probable cause, it is unlawful for a police officer invade the interior of a stopped car once the suspects have been removed and patted down without incident and any immediate threat to safety thereby eliminated. People v. Carvey 89 N.Y.2d 707 (1997) (Board Review 10)

§ 87(2)(g)

Allegation L- Abuse of Authority: PO Derek Webber searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation M-Abuse of Authority: PO Carmello Stracuzzi searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation N- Abuse of Authority: Officers damaged § 87(2)(b)'s property.

§ 87(2)(b) and § 87(2)(b) alleged that along with PO Sepulveda, PO Webber and PO Stracuzzi joined in searching not only the areas described by PO Sepulveda, but also the glove compartment, center console, and in between and under all of the seats in the vehicle. They also alleged that these officers ripped § 87(2)(b)'s speakers out of his backseat, in order to see into his trunk.

All officers interviewed taking part or witnessing a search of § 87(2)(b)'s vehicle, other than the lungeable area search by PO Sepulveda. Additionally, neither § 87(2)(b) nor § 87(2)(b) could identify a specific officer or officers that ripped out the speaker. They also denied actually witnessing the speakers being ripped out. Instead, they stated that they noticed the damaged property after they returned to § 87(2)(b)'s car and the officers left the scene.

All officers denied damaging any property including the speakers in the car, and denied even touching the speakers or being aware that any property within the car was damaged.

§ 87(2)(b) was unable to provide any evidence of this damaged property, including photographs or receipts for repair despite multiple requests to have him do so.

Allegation O- Abuse of Authority: PO Charles Dever threatened § 87(2)(b) with the use of force.

The officers were consistent that PO Dever, PO Stracuzzi and PO Webber were simply there for physical presence and to assure that PO Sepulveda and Sgt. Rodriguez were alright.

[illegible]

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad: 4

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date